



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION ON REHEARING
Case #: FTI - 203306

PRELIMINARY RECITALS

Pursuant to a petition filed on September 30, 2021, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Racine County Department of Human Services regarding FoodShare benefits (FS), a hearing was scheduled for October 27, 2021. Petitioner failed to show for that hearing but thereafter requested another date for hearing, which was granted and scheduled for November 17, 2021. Petitioner failed to show for that hearing and the matter was dismissed as abandoned on November 17, 2021. Petitioner requested a rehearing on December 17, 2021, which was granted and a rehearing was held on January 19, 2022, by telephone.

The issue for determination is whether the agency correctly sought to intercept the petitioner's tax refund to collect three FS overpayments.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED] [REDACTED]
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:
Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. By three notices dated April 1, 2021, the agency informed petitioner that she was overpaid FS in claim # [REDACTED], claim # [REDACTED], and claim # [REDACTED].
3. Petitioner did not appeal the overpayment notices.
4. By a notice dated September 17, 2021 the agency informed petitioner that it intended to intercept her state tax refunds to recover the overpayments.
5. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on September 30, 2021.

DISCUSSION

Wis. Stat. §49.85, provides that the agency shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, over-issuance of FS, and Medical Assistance payments made incorrectly.

The agency must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat. §49.85(4)(b) (emphasis added), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues *that were presented at a prior hearing* or that could have been presented at a prior opportunity for hearing.

The agency is required to recover all overpayments of public assistance benefits. An overpayment occurs when a FS household receives more FS than it is entitled to receive. 7 C.F.R. § 273.18(a). The federal FS regulations provide that the agency shall establish a claim against a FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. § 273.15(g); *see also* Wis. Admin. Code §HA 3.05(3)(b). The federal FS regulations also provide that all adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); *FS Handbook*, §7.3.1.2. The regulations also require the agency provide notice of any overpayment claim to the member; that occurred. *See* 7 C.F.R. §273.18(3).

Petitioner did not appeal the overpayments within 90 days of the notices. Those appeal rights were provided explicitly in those notices. She therefore “sat” on her appeal rights for those actions and has now lost them. Thus, the Division of Hearings and Appeals cannot review the merits of the overpayment claim as she could have presented them at her prior opportunity for hearing. No exception applies here, and I do not have authority to change the situation here out of fairness. I also have no authority to determine the fairness of the repayment terms. It is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. *See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under the law, the agency has acted properly. Petitioner may contact the

Public Assistance Collection Unit to discuss repayment options, but there is no guarantee that they would agree to any change at this stage.

The state income tax refund certification of the public assistance debts must be sustained.

CONCLUSIONS OF LAW

1. Because petitioner did not appeal the overpayment claims timely, the Division of Hearings and Appeals cannot review the merits of the claims at this time.
2. The Public Assistance Collection Unit may impose a tax intercept to recover claim # [REDACTED], claim # [REDACTED], and claim # [REDACTED].

THEREFORE, it is

ORDERED

That the petition for review is dismissed.

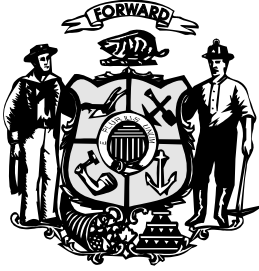
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of January, 2022

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 25, 2022.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability